

AMENDED IN ASSEMBLY MARCH 29, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2721**

**Introduced by Assembly Member Wesson**  
***(Principal coauthor: Assembly Member Longville)***

February 25, 2000

---

---

An act to amend Section 1770 of the Civil Code, and to amend Sections 2872 and 2874 of, and to add Section 2875.5 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as amended, Wesson. Automatic dialing-announcing devices.

(1) Existing law authorizes the Public Utilities Commission to control and regulate the use of automatic dialing-announcing devices and specifies the hours during which the devices may not be operated. Existing law also provides for exemptions from regulation and time-of-use limitations in various situations, including the contacting of an established business associate, customer or other person having an established relationship with the person using the automatic dialing-announcement device. ~~Existing law also permits the device to be operated if an unrecorded, natural voice announcement has been made to the person called by the person calling.~~

This bill would delete the exemption for the situation described above. *This bill would also expand the exemption from time-of-use limitations to include an affiliate of a public*

utility, as prescribed. The bill would also state that the requirement that an automatic dialing announcement message be preceded by an unrecorded natural voice message does not apply to specified situations.

The bill would prohibit a prerecorded message from being left on an answering machine, voicemail, or other message recording device. The bill would prohibit, on and after July 1, 2001, any person operating ~~an automatic dialing announcing device~~ *specified automatic calling equipment* from making a telephone connection for which no person, acting as an agent or telemarketer, is available to contact the person called.

(2) ~~THE~~ The Consumers Legal Remedies Act prohibits any person in a transaction intended to result, or which results, in the sale or lease of goods or services to disseminate an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message. The act exempts from that prohibition a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call.

This bill would delete that exemption *and add an exemption for a call for the purpose of fraud prevention.*

(3) The bill would make related legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of  
2 the following:

3 (a) The use of the telephone to market goods and  
4 services to the home and other businesses is now  
5 pervasive due to the increased use of cost-effective  
6 telemarketing techniques.



(b) Unrestricted telemarketing, however, can be an intrusive invasion of privacy, and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

(c) Many consumers are outraged over the proliferation of intrusive nuisance calls to their homes from telemarketers, including, but not limited to, prerecorded messages and abandoned calls.

(d) It is the intent of the Legislature in enacting this act to balance individual privacy rights and public safety concerns with commercial free speech rights.

SEC. 2. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

- 1 (10) Advertising goods or services with intent not to  
2 supply reasonably expectable demand, unless the  
3 advertisement discloses a limitation of quantity.
- 4 (11) Advertising furniture without clearly indicating  
5 that it is unassembled if that is the case.
- 6 (12) Advertising the price of unassembled furniture  
7 without clearly indicating the assembled price of that  
8 furniture if the same furniture is available assembled  
9 from the seller.
- 10 (13) Making false or misleading statements of fact  
11 concerning reasons for, existence of, or amounts of price  
12 reductions.
- 13 (14) Representing that a transaction confers or  
14 involves rights, remedies, or obligations which it does not  
15 have or involve, or which are prohibited by law.
- 16 (15) Representing that a part, replacement, or repair  
17 service is needed when it is not.
- 18 (16) Representing that the subject of a transaction has  
19 been supplied in accordance with a previous  
20 representation when it has not.
- 21 (17) Representing that the consumer will receive a  
22 rebate, discount, or other economic benefit, if the earning  
23 of the benefit is contingent on an event to occur  
24 subsequent to the consummation of the transaction.
- 25 (18) Misrepresenting the authority of a salesperson,  
26 representative, or agent to negotiate the final terms of a  
27 transaction with a consumer.
- 28 (19) Inserting an unconscionable provision in the  
29 contract.
- 30 (20) Advertising that a product is being offered at a  
31 specific price plus a specific percentage of that price  
32 unless (1) the total price is set forth in the advertisement,  
33 which may include, but is not limited to, shelf tags,  
34 displays, and media advertising, in a size larger than any  
35 other price in that advertisement, and (2) the specific  
36 price plus a specific percentage of that price represents  
37 a markup from the seller's costs or from the wholesale  
38 price of the product. This subdivision shall not apply to  
39 in-store advertising by businesses which are open only to  
40 members or cooperative organizations organized

1 pursuant to Division 3 (commencing with Section 12000)  
2 of Title 1 of the Corporations Code where more than 50  
3 percent of purchases are made at the specific price set  
4 forth in the advertisement.

5 (21) Selling or leasing goods in violation of Chapter 4  
6 (commencing with Section 1797.8) of Title 1.7.

7 (22) (A) Disseminating an unsolicited prerecorded  
8 message by telephone without an unrecorded, natural  
9 voice first informing the person answering the telephone  
10 of the name of the caller or the organization being  
11 represented, and either the address or the telephone  
12 number of the caller, and without obtaining the consent  
13 of that person to listen to the prerecorded message.

14 (B) This subdivision does not apply to ~~either~~ any of the  
15 following:

16 (i) A call for the purpose of collecting an existing  
17 obligation.

18 (ii) *A call for the purpose of fraud prevention.*

19 (iii) Any call generated at the request of the recipient.

20 (23) The home solicitation, as defined in subdivision  
21 (h) of Section 1761, of a consumer who is a senior citizen  
22 where a loan is made encumbering the primary residence  
23 of that consumer for the purposes of paying for home  
24 improvements and where the transaction is part of a  
25 pattern or practice in violation of either subsection (h) or  
26 (i) of Section 1639 of Title 15 of the United States Code  
27 or subsection (e) of Section 226.32 of Title 12 of the Code  
28 of Federal Regulations.

29 A third party shall not be liable under this subdivision  
30 unless (1) there was an agency relationship between the  
31 party who engaged in home solicitation and the third  
32 party or (2) the third party had actual knowledge of, or  
33 participated in, the unfair or deceptive transaction. A  
34 third party who is a holder in due course under a home  
35 solicitation transaction shall not be liable under this  
36 subdivision.

37 (b) (1) It is an unfair or deceptive act or practice for  
38 a mortgage broker or lender, directly or indirectly, to use  
39 a home improvement contractor to negotiate the terms  
40 of any loan that is secured, whether in whole or in part,

1 by the residence of the borrower and which is used to  
2 finance a home improvement contract or any portion  
3 thereof. For purposes of this subdivision, “mortgage  
4 broker or lender” includes a finance lender licensed  
5 pursuant to the California Finance Lenders Law  
6 (Division 9 (commencing with Section 22000) of the  
7 Financial Code), a residential mortgage lender licensed  
8 pursuant to the California Residential Mortgage Lending  
9 Act (Division 20 (commencing with Section 50000) of the  
10 Financial Code), or a real estate broker licensed under  
11 the Real Estate Law (Division 4 (commencing with  
12 Section 10000) of the Business and Professions Code).

13 (2) This section shall not be construed to either  
14 authorize or prohibit a home improvement contractor  
15 from referring a consumer to a mortgage broker or  
16 lender by this subdivision. However, a home  
17 improvement contractor may refer a consumer to a  
18 mortgage lender or broker if that referral does not violate  
19 Section 7157 of the Business and Professions Code or any  
20 other provision of law. A mortgage lender or broker may  
21 purchase an executed home improvement contract if  
22 that purchase does not violate Section 7157 of the Business  
23 and Professions Code or any other provision of law.  
24 Nothing in this paragraph shall have any effect on the  
25 application of Chapter 1 (commencing with Section  
26 1801) of Title 2 to a home improvement transaction or the  
27 financing thereof.

28 SEC. 3. Section 2872 of the Public Utilities Code is  
29 amended to read:

30 2872. (a) The connection of automatic  
31 dialing-announcing devices to a telephone line is subject  
32 to this article and to the jurisdiction, control, and  
33 regulation of the commission.

34 (b) No person shall operate an automatic  
35 dialing-announcing device except in accordance with this  
36 article. The use of such a device by any person, either  
37 individually or acting as an officer, agent, or employee of  
38 a person or corporation operating automatic  
39 dialing-announcing devices, is subject to this article.

1 (c) No person shall operate an automatic  
2 dialing-announcing device in this state to place a call that  
3 is received by a telephone in this state during the hours  
4 between 9 p.m. and 9 a.m. California time.

5 (d) This article does not prohibit the use of an  
6 automatic dialing-announcing device by any person  
7 exclusively on behalf of any of the following:

8 (1) A school for purposes of contacting parents or  
9 guardians of pupils regarding attendance.

10 (2) An exempt organization under the Bank and  
11 Corporation Tax Law (Part 11 (commencing with  
12 Section 23001) of Division 2 of the Revenue and Taxation  
13 Code) for purposes of contacting its members.

14 (3) A privately owned or publicly owned cable  
15 television system for purposes of contacting customers or  
16 subscribers regarding the previously arranged  
17 installation of facilities on the premises of the customer or  
18 subscriber.

19 (4) A privately owned or publicly owned public utility  
20 *or its affiliate* for purposes of contacting customers or  
21 subscribers regarding the previously arranged  
22 installation ~~of facilities or ongoing operation of facilities~~  
23 *or services* on the premises of the customer or subscriber  
24 or for purposes of contacting employees for emergency  
25 actions or repairs required for public safety or to restore  
26 services.

27 (5) A petroleum refinery, chemical processing plant,  
28 or nuclear powerplant for purposes of advising residents,  
29 public service agencies, and the news media in its vicinity  
30 of an actual or potential life-threatening emergency.

31 (6) *The calls set forth in paragraphs (1) to (5),*  
32 *inclusive, are not subject to Section 2874.*

33 (e) This article does not prohibit law enforcement  
34 agencies, fire protection agencies, public health agencies,  
35 public environmental health agencies, city or county  
36 emergency services planning agencies, or any private  
37 for-profit agency operating under contract with, and at  
38 the direction of, one or more of these agencies, from  
39 placing calls through automatic dialing-announcing

1 devices, if those devices are used for any of the following  
2 purposes:

3 (1) Providing public service information relating to  
4 public safety.

5 (2) Providing information concerning police or fire  
6 emergencies.

7 (3) Providing warnings of impending or threatened  
8 emergencies.

9 ~~These calls shall not be subject to Section 2874.~~

10 (4) *The calls set forth in paragraphs (1) to (3),*  
11 *inclusive, are not subject to Section 2874.*

12 (f) This article does not apply to any call generated at  
13 the request of the recipient.

14 (g) The commission may determine any question of  
15 fact arising under this section.

16 SEC. 4. Section 2874 of the Public Utilities Code is  
17 amended to read:

18 2874. (a) If telephone calls are placed through the  
19 use of an automatic dialing-announcing device, the  
20 device may be operated only after an unrecorded, natural  
21 voice announcement has been made to the person called  
22 by the person calling. The announcement shall do all of  
23 the following:

24 (1) State the nature of the call and the name, address,  
25 and telephone number of the business or organization  
26 being represented, if any.

27 (2) Inquire as to whether the person called consents to  
28 hear the prerecorded message of the person calling.

29 (b) The calling person described in subdivision (a)  
30 shall disconnect the automatic dialing-announcing device  
31 from the telephone line upon the termination of the call  
32 by either the person calling or the person called.

33 (c) It does not constitute consent of the person called  
34 to hear the prerecorded message of the calling person if  
35 the calling person connects to an answering machine,  
36 voicemail, or other message recording device, and the  
37 prerecorded message may not be left on the answering  
38 machine, voicemail, or other message recording device.

39 SEC. 5. Section 2875.5 is added to the Public Utilities  
40 Code, to read:



1   2875.5. On and after July 1, 2001, no person operating  
2 ~~an automatic dialing announcing device may make a~~ any  
3 *automatic equipment that incorporates a storage*  
4 *capability of telephone numbers to be called or a random*  
5 *or sequential number generator capable of producing*  
6 *numbers to be called may make a* telephone connection  
7 for which no person, acting as an agent or telemarketer,  
8 is available to contact the person called.

O

